

REMARKS

I. Introduction

Claims 9-16 are currently pending in the present application and stand rejected. Applicants have amended claim 9.

Applicants note with appreciation the acknowledgment of the claim for foreign priority and the indication that all certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

II. Rejection of Claims 9-12 and 16 under 35 U.S.C. § 102(b)

Claims 9-12 and 16 are rejected under 35 U.S.C. § 102(b) as being anticipated by Waters (EP 1 030 188). Applicants respectfully submit that the rejection should be withdrawn for at least the following reasons.

In order to reject a claim under 35 U.S.C. § 102(b), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See Scripps Clinic & Research Foundation v. Genentech, Inc., 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)). To the extent that the Examiner may be relying on the doctrine of inherent disclosure, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'l. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherence of that result or characteristic.

Amended claim 9 recites, in relevant parts, “a classifier that classifies the at least one object into one of a plurality of classes including object classes and a reject class, based on a three-dimensional shape of the at least one object and dimensions of the object, the

environmental sensor system ascertaining the shape and the dimensions, wherein the classifier performs temporal filtering in classifying the at least one object by taking into consideration a previous classification of the at least one object, and wherein each object class has assigned properties which describe at least one of characteristic features of the class and differences from other classes, the properties of the object classes being stored in a model database, and wherein the at least one object is classified as belonging to the reject class if the at least one object does not correspond to any of the properties of the object classes stored in the model database." Applicants respectfully submit that Waters does not disclose or suggest any of the above-recited features, e.g., features regarding temporal filtering and the use of the reject class. For at least this reason, claim 9 and its dependent claims 10-12 and 16 are allowable over Waters.

Independent of the above, to the extent the Examiner cites paragraph [0020] of Waters as disclosing the use of "an orientation" of an object in the classification, as recited in dependent claim 11, the cited paragraph of Waters merely mentions using the "position" of an object, which is fundamentally different from "an orientation." For this reason, claim 11 is additionally allowable over Waters.

Independent of the above, to the extent the Examiner cites paragraphs [0020], [0021], [0026] and [0027] of Waters as disclosing the feature of checking the validity of the classification using data from a database, as recited in claim 12, Applicants note that paragraph [0021] of Waters merely describes adding further attributes to the attributes of the partially attributed data objects 231 by using a database 239, which is different from checking an already established classification to determine whether the classification is valid. For this reason, claim 12 is additionally allowable over Waters.

For the foregoing reasons, withdrawal of the rejection of claims 9-12 and 16 is requested.

III. Rejection of Claims 13-15 under 35 U.S.C. § 103(a)

Claims 13-15 are rejected under 35 U.S.C. § 103(a) as being rendered obvious by the combination of Waters and Strumolo (U.S. Patent Application Publication No.

2003/0114964). Applicants respectfully submit that the rejection should be withdrawn for at least the following reasons.

In rejecting a claim under 35 U.S.C. § 103(a), the Examiner bears the initial burden of presenting a *prima facie* case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, the Examiner must show, *inter alia*, that there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or combine the references, and that, when so modified or combined, the prior art teaches or suggests all of the claim limitations. M.P.E.P. §2143. In addition, as clearly indicated by the Supreme Court, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to [modify] the [prior art] elements” in the manner claimed. See KSR Int’l Co. v. Teleflex, Inc., 82 U.S.P.Q.2d 1385 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” Id., at 1396. To the extent that the Examiner may be relying on the doctrine of inherent disclosure in support of the obviousness rejection, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Claims 13-15 depend on claim 9. As discussed above, Waters does not anticipate parent claim 9. In addition, the secondary Strumolo reference fails to remedy the deficiencies of Waters as applied against parent claim 9, i.e., Strumolo fails to suggest the features regarding temporal filtering and the use of the reject class recited in claim 9. Accordingly, dependent claims 13-15 are allowable over the overall teachings of Waters and Strumolo, and withdrawal of the rejection is requested.

IV. **CONCLUSION**

In view of all of the above, it is respectfully submitted that all of the presently pending claims under consideration are in allowable condition. Prompt reconsideration and allowance of the application are respectfully requested.

Respectfully submitted,

KENYON & KENYON LLP

 (P. No.
36,197)

Dated: August 30, 2011

JONG LEE for Gerard Messina
Gerard A. Messina
Reg. No. 35,952
One Broadway
New York, NY 10004
(212) 425-7200
CUSTOMER NO. 26646